

Utilisation of Land Owned by PT Kereta Api Indonesia by the Community According to Milk Ad-Daulah Theory: A Study in Aceh Besar District, Indonesia

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Abstract

Land owned by PT Kereta Api Indonesia (PT KAI) is one of the state-owned lands that is used for the public interest. However, the reality is that the people of Sukamakmur Subdistrict utilise land owned by PT Kereta Api Indonesia for personal use without permission from PT KAI. This research uses qualitative research methods with a juridical sociological approach. Data acquisition was carried out by field research and library research methods, with observation, interview and documentation techniques. The results of the research show that; First, land utilisation is carried out by the community in various forms such as construction (kiosks, houses, doorsmeer, kamling posts, and huts), animal husbandry (chickens, ducks, and cows), and plantations (cassava, areca nut, cocoa, chilli, and others). Second, the utilisation is carried out for personal use without permission from the government, especially from PT KAI, so the community has violated the Criminal Code Article 167 Jo Article 389 and Law No. 23 of 2007 Article 192 on the prohibition of entering, occupying, using without permission and land grabbing. So that land utilisation is considered legally invalid (illegal). Third, according to the concept of *Milk Al-Daulah*, state-owned land should be intended for the public interest, not private interests, and should not be utilised without a valid legal provision or permission from the relevant government. So that the utilisation of land owned by PT KAI by the people of Sukamakmur Sub-district is not in accordance with the *Milk Al-Daulah* perspective

Keywords: Land Utilisation, *Milk Al-Daulah* theory, PT. KAI, Islamic Economic Law

Introduction

State-owned land or land in principle is a property or asset that has various forms with various benefits, because this is to make it easier for the state to use its assets to advance the economy and to improve the lives of its people, especially to realise basic values in fulfilling the benefits of life such as building roads, railways, airport facilities, school buildings, houses of worship, and various other important public facilities such as markets, sports facilities and others. So the government with all *its stakeholders* can plan and build various facilities and infrastructure for the lives and benefits of its people.¹

Land utilisation is permitted if permission is sought from the government. The government itself has regulated the utilisation of state-owned land by citizens under certain conditions. And there is a choice of agreements in the utilisation of state-owned land. Whether it is a lease agreement, sale and purchase agreement, or others.

The fiqh scholars agree in giving the definition and conditions of state land (dead/ abandoned) is land free of state rights, uncultivated and unutilised by a person or legal entity located in an area or region. Land that is far from settlements and not one of the social facilities. While abandoned land is land that has been abandoned by the owner for three years, after verification with the owner it returns to state land and the government can distribute it to people in need. The meaning and requirements of dead/ abandoned land given by fiqh scholars have met the standardisation of government spatial planning in accordance with the needs and benefits of individuals and society.²

The scholars explained the prohibitions on the utilisation of land that is still under the control of *milk al-daulah* as part of assets such as land that belongs to the state is prohibited from being controlled / monopolised by individuals.³ Here it is clear that its utilisation is in the public interest, but if state land is controlled by individuals, it will raise various kinds of problems and in essence it is not allowed. It is likely to hinder the

¹Ali Akbar, "The Concept of Ownership in Islam". *Ushuluddin Journal*, Vol. XVIII, No. 2, July 2012, pp. 156

² Mahli Ismail, *Fikih Hak Milik Atas Tanah Negara*, cet. 1, (Yogyakarta: Kaukaba Dipantara, 2013), p. 41.

³ Nasrun Haroen, *Fiqh Muamalah*, cet. 2, (Jakarta: PT. Gaya Media Pratama, 2007), p. 35.

development of the country and land is also part of the territory as an instrument of state formation. Then, state-owned land is forbidden to be turned off. Land should be utilised properly by the government. Because it is the government's responsibility to utilise the land properly so that it has an impact on the progress of the country's infrastructure. Also, state-owned land is forbidden to be misused, remaining in principle, namely for the benefit of the people.

The same applies to land owned by PT KAI. Basically, land owned by PT KAI functions as a railway facility in Indonesia. Likewise, the railway in Sukamakmur Sub-district is located in Aceh Besar Regency, where the station is right at the Sibreh market roundabout in Reuhat Tuha village. At first, it was used by the community to travel long distances as public transportation because there were no adequate private vehicles and not only that, the train at that time also functioned to distribute goods from outside the area.

For a long time, the land owned by PT KAI in Sukamakmur District has not been used properly because the government no longer provides policies for railway operations in Aceh. So that the land becomes abandoned and provides opportunities for certain parties to benefit.

Until now, many people have begun to use the land owned by PT KAI because of its strategic location, and the community does not need to pay for the use of the land. So every year there are more and more people who use the land for personal use.

Of course, this affects the surrounding environment and can have a negative impact on the general public. As with the construction of shophouses, this has a negative impact because it is not only for personal gain but will hamper traffic and can lead to disputes between fellow communities because many communities feel disturbed and can also make people compete to build shophouses on the same land.

In the interview, it was mentioned that the community carried out plantation activities, namely planting plants such as chocolate trees, areca nut trees, kaffir lime, sweet potatoes and others, because the land was not only abandoned but also unfortunate because the location was close to irrigation so it was good for planting various plants. So that many people have been gardening even for a long time and the benefits can be felt by the

surrounding community both in terms of daily cooking needs and economically by selling grains, especially cocoa and areca nut.⁴

Not far from the plantation, there is also a tailor shop located on the road and has been built since 2021. It is known that the construction of the shophouse aims to attract many consumers and consumers have no difficulty finding a place to sew. However, the community must ask permission and pay utilisation funds to the previous owner, namely the community who feels they control the land.⁵

Then there are also people who build houses because of the strategic location, namely next to irrigation and on the road and the higher land prices, which benefit the community, especially for people who are classified as economically low. However, the community must also pay and ask permission from the previous owner. By paying a sum of Rp2,000,000 and asking for permission to use the land. By doing so, the controlling party is transferred. There is no time limit for utilisation unless the government starts to take strong action against such actions.⁶

In addition, it is known that other houses are being built and commercialised. The house consists of 2 floors designed semipermanently and every year there are people who are interested. It is usually rented as a halfway house or temporary home and there are also those who sell goods such as coffee shops. It is commercialised to increase the owner's income as well as to follow other people who utilise abandoned land.

Next door is a chicken farm run by the same family that owns the rental house. This farm is relatively new compared to the rental house and not far from it there is also a Doorsmeer that has been functioning for a long time. And this is also managed by the same family in close proximity. Three developments carried out by one family with the excuse of just utilising and following the local community who have begun to rampant development on land owned by PT KAI.⁷ In addition to monopolising the land, the three

⁴ Interview with Lukman, a resident of Lambaro Sibreh Village, Sukamakmur Sub-district, on 01 June 2023.

⁵ Interview with Amelia, a resident of Lambaro Sibreh Village, Sukamakmur Sub-district, on 01 June 2023.

⁶ Interview with Darmiati, a resident of Lampisang Village, Sukamakmur Sub-district, on 31 May 2023.

⁷ Interview with Nurdin, a resident of Lampisang Village, Sukamakmur Sub-district, on 01 June 2023.

utilisations have no licensing process, unlike the construction of houses and shophouses above because the party that feels it has control over the land is the owner of the three buildings. So they do not have to pay for utilisation or ask for permission.

From the various views above, it can be concluded that the licensing aspect carried out by the community of Sukamakmur Subdistrict is not with the authorities but with the parties or local people who feel they have power over PT KAI's land. This is justified by the local community who also feel they have control over PT KAI's land. Even before utilisation, each area of land owned by PT KAI has been controlled by the local community so that if there are people who want to use it, they must pay and ask permission first to the previous community who feel they control the area to be used. Fees are charged as maintenance and supervision services. So local people who feel they have control over the land are free to use it either by gardening or building.⁸

These are just some of the forms of utilisation of land owned by PT KAI by the people of Sukamakmur Sub-district but the awareness of the people of Sukamakmur Sub-district in the aspect of legality is still very minimal even though it is clear that the land belongs to PT KAI and there are signs along the land. The community should not ask for permission or make agreements with parties other than the authorities and permits related to land use must be made with PT KAI.

Based on the description above, the researcher wants to study further and write it in the form of a research entitled: "Utilization of Land Owned by PT Kereta Api Indonesia by the Community of Sukamakmur Subdistrict in the Perspective of *Milk Al Daulah* while the objectives of this study are to analyse the form of PT KAI land use carried out by the community of Sukamakmur Subdistrict, to examine the legality aspects of PT KAI land use by the community of Sukamakmur Subdistrict and to find out the *milk al-daulah* perspective related to PT KAI land use by the community of Sukamakmur Subdistrict.

⁸ Interview with Mariani, a resident of Lambaro Sibreh Village, Sukamakmur Sub-district, on 01 June 2023.

Research Methods

The approach used in this research is juridical sociological. The reason is because there are juridical aspects in the use of state-owned land and sociological aspects in the use by the community.⁹ Sociological juridical research is research on law by analysing social activities in society that conflict with rules or laws. In this research, the author analyses the legality of the use of land owned by PT KAI by the community of Sukamakmur District.

This type of research is qualitative (legal). The type of qualitative research is research that describes the object or behaviour of the subject specifically.¹⁰ So the author will describe or narrate objects and subjects clearly and in accordance with empirical facts, namely describing the pattern of land use owned by PT KAI by the community of Sukamakmur District. To facilitate the author, the following data collection methods used in the research are Field research in the form of interviews with the people of Sukamakmur Subdistrict use land owned by PT KAI, as well as literature research based on literature studies, namely referring to books, journals, articles, and other literature sources.

Data collection techniques are procedures in obtaining valid data. This research uses data collection techniques such as observation, interview and documentation. The data sources in this study are in form of primary data where this research is obtained through the people who use PT KAI land, namely shopkeepers, houses, doorsmeers, garden owners, and farm owners, as well as secondary data sourced from library research, namely from books, journals, articles, which are related to research variables. Such as excerpts from Mahli Ismail's book entitled "Fikih Hak Milik Atas Tanah Negara" to strengthen the idea of juridical aspects in research.

After all the data is collected, the next step is to analyse the data, so that conclusions are produced that can answer the problems studied, and

⁹ Zulfi Diane Zaini, "Implementation of Normative Juridical Approach and Normative Sociological Approach in Legal Science Research," *Journal of PRANATA HUKUM*, Vol. 6, No. 2, July 2011, p. 120. 120.

¹⁰ Muhammad Teguh, *Economic Research Methodology*, cet.1, (Jakarta: PT. Raja Grafindo Persada, 2005), p. 14. 14.

the results are clear, accurate and accountable. Then, the data that has been obtained is analysed with qualitative analysis.

Results and Discussion

A. Forms of Land Utilisation by the Community of Sukamakmur Sub-district

State land owned by PT KAI in Sukamakmur Sub-district passes the route from Mukim Aneuk Batee to Sibreh, namely on the route of Bukloh, Niron, Aneuk Batee, Meunasah Bakthu, Meunasah Tuha, Kling Manyang, Lampisang, Lambaro Sibreh, Reuhat Tuha and Dilib villages.¹¹

Until now, PT KAI land is still not operating and is not managed properly so that the land is abandoned. Therefore, the surrounding community utilised the land owned by PT KAI and revived it. The location of PT KAI's land is very strategic for several reasons. Firstly, the land is next to irrigation which makes it easier for people to grow crops or raise livestock. Secondly, it is not far from the highway and market, so people use the land to build houses because access to the market and the highway is more efficient and there is no need to spend a lot of money to erect buildings because people who feel they own the land do not need to pay if they want to use it unless the land is not theirs but belongs to another community. Thirdly, due to the low economic level of many residents, people took the initiative to build kiosks to generate income from selling. Fourth, with many parties utilising PT KAI's land, people who see this phenomenon want to use it too.¹²

Land utilisation for livestock farming consists of chicken, duck and cattle farming. Likewise with plantations, which consist of cassava gardens, chocolate gardens, areca nut gardens, papaya gardens, rambutan, langsat, chilli, kangkung, and others. Some stalls are built in the form of coffee stalls (3 buildings), grocery stalls, chicken noodle stalls, groceries (2 buildings) and refill water. Kiosks were built more than other buildings due to the large number of local village children and school children who buy snacks at the kiosks.

¹¹ Interview with Choiril Rasyid, Asset Manager of Sub-Division 1.1 Aceh in Banda Aceh Region, on 23 May 2023.

¹² Interview with Mulutina, owner of a kiosk in Lambaro Sibreh Village, Sukamakmur Sub-district, on 19 May 2024.

In general, people are encouraged to use land owned by PT KAI for the productive economic development of each family. Some of them take advantage without caring about other parties by monopolising the land for themselves or managed by one family, which builds four forms of buildings and is located in the same settlement with close proximity. The form of utilisation is by building chicken and duck farms, next to which a house is built, followed by a house for rent, and a doorsmeer. All four forms of land use are carried out and managed by the same family. As a result, there is a monopoly of land and without permission from the authorities. Not only that, the rampant development on the land is feared to disrupt public road order and disputes between fellow communities.

B. Legality Aspects of PT KAI Land Utilisation by the Community of Sub-district

Land owned by PT KAI, especially in the Sukamakmur Sub-district area, has long been used by the community and each land is acquired by the local community so that it is owned without legal procedures. Only with the assumption that the land belongs to one of the parties that will be passed on to their children for generations, as a result if anyone wants to use the land must ask permission from a third party even though legally the land belongs to PT KAI. Not only asking permission to a third party, there are other things that must be fulfilled so that ownership can be transferred, namely by paying a sum of money around IDR 2,000,000.00 but it could be different, depending on the agreement of the parties and without a written contract or agreement. Unless the utilising party is the party who feels they own the land owned by PT KAI. They do not need to pay, make an agreement or ask for permission no matter how wide and how much development is carried out. The community has the opportunity to take as much profit as possible. The deadline for ownership is when the authority takes over and re-manages PT. KAI land according to its function and that's when the ownership rights end.¹³

In the previously mentioned problems could have caused many problems, starting from actions that are not in accordance with the law where the agreement is made with a third party not with PT KAI so that

¹³ Interview with Riska, a resident of Lampisang Village, Sukamakmur Sub-district, on 11 May 2024.

ownership will not be valid, and the agreement is not made in writing which can cause new problems for both parties, both fraud and harm to one party. It is clear that the utilisation of land owned by PT KAI by the people of Sukamakmur Sub-district is illegal.

According to the Criminal Code (Kitab Undang-Undang Hukum Pidana) Article 167 jo Article 389, the government prohibits any person/group from entering, occupying and occupying environmental areas, land and buildings of other parties without rights. Similarly, PERPU No. 51 of 1960 prohibits the use of land without authorisation.

PT KAI as the party that has the power strictly prohibits the act of construction or use of PT KAI's land through the regulation of Law No. 23 of 2007 Article 192, which reads "For every person who builds buildings, makes walls, fences, embankments, and other buildings, plants tall trees, or places goods on the railway track, which interferes with free view and endangers the safety of railway travel, shall be sentenced to imprisonment for a maximum of one year or a maximum fine of Rp100,000,000.00". Most people are not very sensitive and concerned about the rules so the role of *stakeholders* is needed.

Geuchik as the head of the village can only supervise appropriately and not all parties ask for permission to build on PT KAI land to Geuchik, as long as it does not have a negative effect on the surrounding environment and does not harm others then Geuchik cannot prohibit as it should, however in the social life of the indigenous people consider the land owned by PT KAI has belonged to local residents for generations and is used annually only to meet their daily needs. However, some of them are aware that it is not allowed to use the land without the permission of PT KAI. However, they still use the land to fulfil their daily needs, such as gardening, raising livestock, and selling. The things produced are also makeshift which is only enough for survival.¹⁴

Similarly, the Sukamakmur sub-district stated that supervision of permits is the domain of PT KAI as the owner of the rights. If someone asks for permission, the sub-district cannot say whether it is allowed or not, although basically it is not allowed. The sub-district has the authority to

¹⁴ Interview with M. Nafi, Geuchik of Lambaro Sibreh Village, Sukamakmur Sub-district, on 18 May 2024.

supervise and advise only as long as land utilisation activities do not cross the boundaries. So far, the form of utilisation by the community is still conducive, but the movement of development continues to increase.¹⁵

While PT KAI's approach is carried out through installing signs, and making land area boundary signs, not all assets can be reached and this results in the appeal of PT KAI being uneven. In overcoming illegal land use, PT KAI will direct and negotiate for the creation of a contract. In accordance with PP (Government Regulation) No. 23 of 2020, one form of utilisation of state property is utilisation cooperation. The community has the right to build buildings and certain forms of utilisation or lease with other parties but may not sell the land. If the community refuses negotiations and refuses to make a contract, PT KAI tries as much as possible by providing an educational approach so that the community understands the importance of legality for land use and avoids harsh treatment to parties who still do not comply with the rules. However, if things wrong, PT KAI will give a firm response and legal sanctions against violators.¹⁶

Within the sub-district, the village head and sub-district head cannot respond freely due to the boundaries of their respective domains of responsibility between *stake holders*, although PT KAI has not been able to provide optimal supervision evenly, but all parties including the surrounding community have contributed equally in monitoring social behaviour in order to maintain public peace.

C. Utilisation of Land Owned by PT KAI by the Community of Sukamakmur District in the Perspective of *Milk Al Daulah*

In Islamic shari'a, state ownership or *milk al-daulah* as a form of property ownership in the authority and control of the state whose use is intended for the benefit of the general public. In essence, *milk al-daulah* cannot be aborted, is public (open), and cannot be owned individually without permission from *stake holders*.

¹⁵ Interview with Azhari, as Head of Sub-District Head of Sukamakmur Sub-District, on 15 May 2024.

¹⁶ Interview with Choiril Rasyid, Asset Manager of Sub-Division 1.1 Aceh in Banda Aceh Region, on 23 May 2023.

According to *milk al-daulah*, the utilisation of land by the community such as the previously mentioned example is certainly not permissible. In principle, the utilisation of state land cannot be privately controlled and must be used for the public good. Unless the land is utilised with the permission of the government, it is legal to utilise it. Therefore, the community must ask for permission or carry out the licensing process first so that there is no misuse of PT KAI's land use. However, what happens is that the people of Sukamakmur District consider PT. KAI land as individual property rights, even though in the concept of *milk al-daulah* state-owned land (PT. KAI) only functions for the public interest and cannot be acquired personally. Not only that, the community also utilised it in various forms including construction such as building houses, stalls, kamling posts, taylor, laundry, huts, kiosks that were semi-permanent. Then there are farms consisting of chicken, cow and duck farms. Finally, the community is also active in gardening by planting areca nut, cocoa, cassava, chilli and other trees for their daily needs or to sell them. But these activities are carried out without the knowledge and absence of a licensing process with related parties, even the community asks for permission to use not to PT KAI but to the community who acquires land owned by PT KAI and must pay a certain nominal to get the transfer of use rights, which will then end when at any time PT KAI reoperates the railway station in Sukamakmur District. Therefore, the utilisation by the community considered illegal. The community should have asked permission from PT KAI asset management either by entering into a contract agreement or otherwise in order to obtain legal certainty. According to the scholars, state land can be utilised as long as there is permission from the government, while the community does not comply with these rules. So in the concept of *milk al-daulah*, there are two things that are violated by the community Sukamakmur District, namely acquiring land privately and no permission for the use of land owned by PT KAI.

The community is aware that their actions have violated the rules stated on every sign belonging to PT KAI, namely the Criminal Code Article 167 Jo, Article 389 and Law No. 23 of 2007 Article 192 concerning the prohibition of entering and occupying other people's land, the prohibition of using land without the permission of the relevant parties, and the prohibition of land grabbing for development and even planting. However,

people still use PT KAI's land without permission from the authorised government and consider it private property.

As result of illegal land utilisation, the community has violated shara' law and formal law for several reasons. Firstly, the people of Sukamakmur Sub-district acquired the land personally even though the land belongs to the State (PT. KAI), which essentially functions for the public interest. Secondly, the people of Sukamakmur Sub-district utilise land owned by PT KAI without obtaining a valid permit from PT KAI, as a result the community's actions are not legally valid. So that it violates the concept of *milk al-daulah*, because state land cannot be the property of a person or group, which is essentially intended only for the public interest and state land can be utilised as long as it gets approval or permission from the relevant party (PT. KAI). The lack of public concern for legal awareness and the lack of attention *from stakeholders* has made this go on for years so that it is growing. People should be aware of the law by fulfilling and complying with the regulations that have been established both as Muslims and civil society.

Conclusion

Land owned by PT KAI is utilised by the people of Sukamakmur Sub-district for individual purposes in various forms. The form of utilisation is in the form of various semi-permanent buildings, livestock and plantations. In land utilisation, the community does not carry out the licensing process to PT KAI and considers land owned by PT KAI as private land. So that it violates the rules of shara' and formal law because there is no valid legality aspect of its use. Contrary to the Criminal Code Article 167 Jo Article 389 and Law No. 23 of 2007 Article 192 regarding the prohibition of land grabbing, entering, occupying, and using land without permission. In essence, state-owned land is only used for the public interest, not for private ownership, and if the land is to be utilised, it should be with the permission of PT KAI.

According to *milk al-daulah*, state ownership is only for social purposes and cannot be used for personal interests. But if someone wants to utilise state land, there must be permission from the authority. So the behaviour of the people of Sukamakmur Subdistrict is not in accordance

and contrary to the perspective of *milk al-daulah*. Because the community considers land owned by PT KAI as property rights and uses it for personal gain without asking permission from PT KAI. As a result, the people of Sukamakmur Subdistrict have violated the rules of shara' and formal law for their behaviour.

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